

## **EMPLOYER STATUS DETERMINATION**

### **Buffalo Ridge Regional Railroad Authority**

This is the determination of the Railroad Retirement Board concerning the status of Buffalo Ridge Regional Railroad Authority (BRRRA) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) (RUIA).

Initially, Nobles Rock Railroad, Inc. (NRRR) (B.A. No. 2650) provided rail operations over a rail line owned by Buffalo Ridge Regional Railroad Authority. The rail line is between milepost 0.0, at or near Agate, Minnesota, and milepost 41.44, at or near Manley, Minnesota, a distance of approximately 41.44 miles. However, BRRRA terminated NRRR's operation lease and NRRR ceased rail operations on July 23, 2000. In Surface Transportation Board (STB) Finance Docket No. 33925, decided December 14, 2000, BRRRA filed a verified notice of exemption to operate its rail line. In a decision dated August 27, 2000, we held that effective with the close of business on July 23, 2000, NRRR ceased being a covered employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

Information regarding BRRRA was provided by Mr. Donald R. Klosterbuer, Executive Secretary of BRRRA. According to Mr. Klosterbuer, BRRRA is a political subdivision formed pursuant to Minnesota Statutes Chapter 398A. Mr. Klosterbuer stated that BRRRA was formed primarily for the purpose of acquiring a railroad line that was about to be abandoned and to own the line for the sole purpose of leasing the line to different rail operators. In 1988, BRRRA acquired the rail line from Chicago Northwestern (CNW) prior to the date CNW abandoned the rail line. Mr. Klosterbuer stated that since the date BRRRA acquired the rail line, the line has historically been leased to operators who were responsible for the operations of the line. Mr. Klosterbuer stated that BRRRA, however, began rail operations on

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July 24, 2000 because its previous operator, NRRR, was unable to provide continued service of BRRRA's rail line. However, on November 27, 2000, Minnesota Southern Railway, Inc. began rail operations over BRRRA's rail line.<sup>1</sup> Mr. Klosterbuer also stated that BRRRA leased the locomotives and equipment during the period it operated its rail line.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

- (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

Section 1 of the RUIA contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act.

The evidence of record establishes that beginning July 24, 2000, BRRRA became a rail carrier operating in interstate commerce. Accordingly, it is determined that Buffalo Ridge Regional Railroad Authority became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and the corresponding provision of the Railroad Unemployment Insurance Act effective July 24, 2000.

In its decision on reconsideration of the employer status of Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that an entity that has

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<sup>1</sup> On August 30, 2001, the Board held that Minnesota Southern Railway, Inc became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective November 27, 2000, the date on which it commenced operations.


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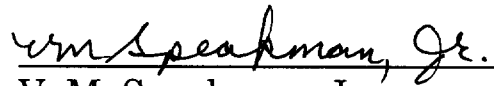
STB authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

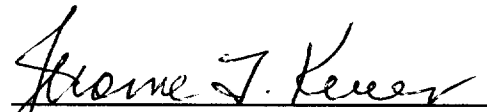
Applying this test to the facts of BRRRA, the Board determines that effective November 27, 2000, BRRRA ceased to be a covered employer under the Acts. The evidence of record shows that BRRRA is a political authority and is controlled by the counties of Rock and Nobles, political subdivisions of the State of Minnesota. The rail line in question was slated for abandonment by Chicago Northwestern prior to its acquisition by BRRRA. BRRRA acquired the rail line to preserve the rail line for future use by other carriers. Based on these facts, we find that BRRRA does not have as a primary business purpose to profit from railroad activities. With respect to the second part of the Railroad Ventures test, BRRRA only provided rail service during the period between July 24, 2000 and November 27, 2000, because its previous carrier, Nobles-Rock, was insolvent and was no longer able to service BRRRA's rail line. Because BRRRA had to provide continuous service along its line, BRRRA leased the equipment used to operate the line to provide rail service. However, once BRRRA entered into a lease and operating agreement with Minnesota Southern Railway, BRRRA ceased all rail operations effective November 27, 2000. Turning to the third of

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the criteria, the record shows that Minnesota Southern Railway, a covered rail carrier employer, conducts railroad operations over the line. The Board therefore finds that effective November 27, 2000, BRRRA ceased to be a carrier under the test set out in our Railroad Ventures decision.

  
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